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Anna Mastraparino

OTHER EXPERIENCES OF BICAMERALISM IN CENTRAL AND SOUTH AMERICA

SUMMARY: 1. Belize, Antigua and Barbuda, Barbados, Bahamas, Grenada, Jamaica, Saint Lucia. — 2. Haiti, Colombia, Paraguay (?), Bolivia (?). — 3. Trinidad and Tobago, Dominican Republic, Chile, Uruguay.

If we exclude the cases of Brazil and Argentina, whose institutional experiences have been devoted a more accurate analysis within the framework of present research, I would suggest that the remaining Central and South American bicameral systems can be divided into three different categories:

- 1) Countries belonging to the Commonwealth;
- 2) Unstable Countries;
- 3) Countries displaying a positive tendency towards stability;

The fact of a country belonging to one rather than to another group of this list, entails different features both in the legal system, and above of all, in the nature, functions and role of the Second Chamber, within the government system.

A preliminary statement is therefore needed: the above-mentioned classification should be intended as merely descriptive and is obviously based on unavoidable simplifications.

1. *Belize, Antigua and Barbuda, Barbados, Bahamas, Grenada, Jamaica, Saint Lucia.*

Latin American countries belonging to the Commonwealth are characterized by a solid institutional continuity and government stabil-

ity. They have developed a form of government that basically follows the Westminster traditional model, allowing the Second Chamber to preserve those characteristics peculiar to the Senates of the past, i.e. the expression of the royal power, a counterforce opposed to the almighty power of the First Chamber.

In the countries still tied to the British Royal House, Senators are not elected directly by the people. They are appointed by the General Governor, the Crown Representative on the national territory. Indeed, in these States, really small in size, it is still possible to use *appointment* as a method for choosing the single members, since the number of people forming the Second Chamber is quite limited.

If it is true that the Senate of countries belonging to the first group originates directly from the idea of a Second Chamber, as the body that enjoys the confidence of the still influential monarchic sovereignty and as the institution that represents the aristocratic oligarchy supporting the monarch's government, the presence of some elements of modernity are clearly recognizable and could help justifying the Chamber of Senators democratic legitimacy and could prove the process of modernization it has undergone.

In order for the General Governor to appoint the Senators, the constitutions of Latin American countries belonging to the Commonwealth provide that the choice of a candidate take into account the suggestion expressed by both the leader of the party that has gained the majority of votes in the election for the House of Representatives, and by the opposition party leader.

It is exactly thanks to the involvement of both party leaders, namely the majority and the opposition leaders, in the appointing process of Senate members that the Senate itself acquires the legitimacy, which is proper to a democratic system and which justifies the entrustment of any kind of power.

Finally, in some cases, the representatives of some interest groups such as religious, social, economic groups etc. can be asked to participate to the appointment of the Senators. This proves that, the participation of the sovereign power (not merely formal) in the selection of Senate candidates was no obstacle for the Second Chamber to become an expression of « supplementary representation ». This aims at institutional-

izing, within a parliamentary system, the acceptance of the existence of different structures and groups that form all together the social and political texture of a nation.

Therefore, although the countries belonging to the first group are all characterized by unitary forms of government and their limited territorial extension has only granted for a form of administrative decentralization, the Latin American legal systems of the countries tied to the Commonwealth have been experiencing a form of supplementary representation, as well as a form of legitimization of the moderation of another power: the power of the First Chamber

2. *Haiti, Colombia, Paraguay (?), Bolivia (?)*.

A number of countries, surely very different to one another but sharing the same system instability, have been classified in the second country group category.

Though the lack of stability seems to be the common thread pervading the whole modern and contemporary history of Central and South America, on the one hand we have a number of cases, the majority actually, where a process of democratic reorganization of power has been implemented yielding significant institutional results (as the case of Chile), on the other hand, the continuous occurrence of coups d'état, social unrests, civil wars, dictatorships have determined a constant strengthen of states of emergency, up to the extent that it is not possible anymore to distinguish extraordinary from ordinary practice.

The major feature characterizing these countries is to be traced back in the clear difficulty to sketch the main traits of their institutional and governmental experience. The reason is to be found in the absence of a relevant institutional continuity where extraordinary government administration is most frequently confused with the ordinary one.

Most of the times, it is even hard to collect information in order to substantiate the theoretical analysis of the system and of the *formula politica istituzionalizzata*. As a matter of fact, there are a number of cases where the constitutional dictates have never been practically applied so that the law system, even when clear and juridical developed, cannot

provide for useful source of information for the investigation of the *costituzione materiale* and its practice.

3. *Trinidad and Tobago, Dominican Republic, Chile, Uruguay.*

Finally, the third group is formed by those states where a process of transformation of institutions and constitutional practice has been since long initiated and therefore this process has resulted in a certain degree of stability pervading the whole system. Although these countries have been experiencing, not so long ago, unstable democracy, the related institutional continuity and the constant process of compliance with the democratic practice would allow a first and general overview of their constitutional practice originating from the legal system.

The countries belonging to the third group seem to have started off their process towards stability beginning with the role of the President of the Republic considered not as much as an emulation of the near model of the United States, but rather as an investigation of the pre-Columbian cryptotype that in the age of the Spanish domination was represented by the figure of the *caudillo*, head and leader of a people easily conducted to degeneration and therefore to the establishment of *democratic dictatorship*.

Within this framework, the Senate is in charge of a supplementary function with respect to the function of the President of the Republic.

In addition to the role of representative of territory and local authorities proper to federal governments, the Senate of some Latin American countries, where the government stability has been reached also thanks to an empowerment of the functions of the President of the Republic and therefore through a personalization of politics, helps the Head of State even surpassing at times the House of Representatives.

The bicameral system belonging to the countries of the third group is by no means perfect and it tends to favor the First Chamber especially in the legislative process allowing them in most cases to overcome the opposite vote of the Senators. Nevertheless, there are for sure other contexts in which the role of the Senate prevails.

As a matter of fact, as far as the mentioned systems are concerned, the Second Chamber mediates between the President and Parliament,

namely between the executive power and the institute of popular representation.

The President-Senate synergy makes it possible for the Second Chamber to be in charge of appointing important offices. Therefore it seems also very likely that this body acquires a symbolic considerable institutional relevance, which turns out to be extremely significant.

The study of the bicameral systems of South and Central America, beyond any real possibility of classification into three categories, has pointed out a transversal aspect common to every case study so far analyzed.

Since the post colonial age, the institutional history of Latin American countries has been shaped by the employment of the exceptional state i.e. a number of institutes very different to one another in terms of nature and contents and all aimed at granting the presence of a government during crises.

Immediate consequence of the declaration of the state of exceptionality is the suspension of collective and personal guarantees on the individual level and the suppression of the principle of power separation on the institutional level, with the resulting freeze of every prerogative of Parliament and thus Senate.

Over the last decades, in order to reduce to the minimum the possible risks related to the abuse of the call for the state of exceptionality, we have been witnessing a progressive constitutionalization of limits, ways and terms of the state of emergency. Frequent reviews of constitutional texts as well as the unavoidable difficulty of activating monitoring institutes, in times of power concentration, seem though to defeat any attempt to protect democracy from risks congenital to the state of exceptionality.

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